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No. 83-533

In the Supreme Court of the United States

OCTOBER TERM, 1983

JERRY K. NICHOLSON,

Petitioner,

v.

INTERSTATE COMMERCE COMMISSION AND UNITED STATES OF AMERICA; LOUISIANA SOYBEAN ASSOCIATION; AND MISSOURI PACIFIC RAILROAD COMPANY;

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

MOTION OF THE AMERICAN FARM BUREAU FEDERATION AND LOUISIANA FARM BUREAU FEDERATION INC. FOR LEAVE TO FILE AMICI CURIAE AND BRIEF AMICI CURIAE IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

PAGE

Table of Authorities ii

Motion of American Farm Bureau Federation and Louisiana Farm Bureau Federation, Inc., for leave to file brief Amici Curiae, and brief Amici Curiae in support of petitioners 1

Interest of American Farm Bureau and Louisiana Farm Bureau Federation, Inc. 2

Substance of the brief Amici Curiae 3

Reasons for granting this motion 4

Brief of American Farm Bureau Federation and Louisiana Farm Bureau Federation, Inc., as Amici Curiae 5

Interest of Amici Curiae and Summary of Argument 6

Argument 7

I.

The loss of prime agricultural land is a serious national problem 7

II.

Federal law and policy dictate that prime agricultural land be preserved when possible and will be subverted if the Interstate Commerce Commission is permitted to unlawfully deregulate the construction of railroad classification yards 8

Conclusion 12

TABLE OF AUTHORITIES

Statutes

PAGE

7 U.S.C. §4201-4209 ..... 3, 9

7 U.S.C. §4201(b) 10

7 U.S.C. § 4201(a)(7) 10

7 U.S.C. §4201(c)(4) 11

Regulations

40 C.F.R. §1501 *et seq.* 9

Other Authorities

National Agricultural Lands Study 7, 8

45 Federal Register 59189 (1980) 9

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MOTION OF THE AMERICAN FARM BUREAU FEDERATION AND LOUISIANA FARM BUREAU FEDERATION, INC. FOR LEAVE TO FILE BRIEF AMICI CURIAE

American Farm Bureau Federation and Louisiana Farm Bureau Federation, Inc., respectfully move this Court for leave to file the accompanying brief amici curiae in support of the petitioner in this case. Written consent of the petitioner Jerry K. Nicholson and the respondents, Louisi-

ana Soybean Association, Interstate Commerce Commission and United States of America have been obtained and are filed herewith. Consent of the respondent Missouri Pacific Railroad Company was requested but refused.

INTEREST OF AMERICAN FARM BUREAU FEDERATION AND LOUISIANA FARM BUREAU FEDERATION, INC.

The American Farm Bureau Federation (AFBF) is a voluntary, general farm organization, organized in 1919 under the "General Not For Profit Corporation Act" of the State of Illinois, with its principle office in Park Ridge, Illinois. The purpose of AFBF is the promotion, protection and representation of the business, economic, social and educational interests of the farmers and ranchers of the United States. AFBF has member State Farm Bureaus in 48 states and Puerto Rico, representing more than 3 million member families.

Louisiana Farm Bureau Federation, Inc., (LFBF) is a nonprofit agricultural corporation organized under the law of Louisiana and domiciled in the Parish of East Baton Rouge. LFBF is dedicated to the promotion of the production and marketing of agricultural products in the State of Louisiana. LFBF is comprised of over 63,000 member farm families in the State of Louisiana, which representation includes substantial membership in the Parish of Pointe Coupee.

The interest of AFBF and LFBF in this case is to represent and protect the economic interest of Farm Bureau members who are engaged in producing food and fibre, and who will be generally impacted by the loss of prime farmland needed for present and future production.

AFBF and LFBF support the petitioner's position that the respondent Interstate Commerce Commission has been permitted by the Court of Appeals to deregulate the construction of railroad classification yards in a manner contrary to legal requirements and adverse to an orderly reduction in that agency's jurisdiction. Central to this issue is the permanent loss of a vast amount of prime farmlands without consideration of the present and future value and need of such lands for agricultural production as is required by Federal policy and law.

SUBSTANCE OF THE BRIEF AMICI CURIAE

The brief amici curiae discusses the importance of prime farmland to the continued well being of the people of the United States and that the loss of prime farmland through conversion to nonagricultural uses, such as a railroad classification yard, has become a serious national problem. In recognition of the seriousness of this problem, Congress enacted the Farmland Protection Policy Act as part of the Agriculture and Food Act of 1981 (P.L. 97-98; 7 USC 4201-4209) to minimize the extent to which any Federal action will contribute to the unnecessary and irreversible loss of prime farmland to nonagricultural uses. The actions and programs contemplated by the Farmland Protection Policy Act include regulatory actions by the Interstate Commerce Commission over railroads and railroad line extensions or additions.

REASONS FOR GRANTING THIS MOTION

AFBF and LFBF seek this Court's permission to express their views in this case because the Courts' disposition herein of the question regarding the regulatory jurisdiction of the Interstate Commerce Commission over railroad classification yards will profoundly affect the rate and amount of prime farmlands in the United States that are converted to nonagricultural uses and permanently lost to agricultural production. Accordingly, AFBF and LFBF had requested, but were denied, leave to intervene in the Interstate Commerce Commission, proceeding [see *Nicholson* v. *Missouri Pacific R.R.*, 366 I.C.C. 69 n.2 (1982)] and filed briefs amicus curiae in the review proceeding at the court of appeals.

Respectfully submitted,

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BRIEF OF AMERICAN FARM BUREAU FEDERATION AND LOUISIANA FARM BUREAU FEDERATION, INC., AS AMICI CURIAE

American Farm Bureau Federation and Louisiana Farm Bureau Federation, Inc., respectfully submit this brief in support of petitioner's position.

INTEREST OF AMICI CURIAE AND SUMMARY OF ARGUMENT

A statement describing the American Farm Bureau Federation and Louisiana Farm Bureau Federation, Inc., and their interest herein is set forth in the preceding motion requesting leave to file this brief amici curiae. Also, a summary of the following arguments is set forth in the preceding motion under the heading "Substance of the Brief Amici Curiae."

ARGUMENT

I.

THE LOSS OF PRIME AGRICULTURAL LAND IS A SERIOUS NATIONAL PROBLEM

American Farm Bureau Federation (AFBF) and Louisiana Farm Bureau Federation, Inc., (LFBF) are vitally concerned about the rising tide of involuntary takings of prime farmlands as a valuable national resource for utility, recreation, wildlife, urban, water, industrial, and transportation uses without considering the effects of the loss of such farmland.

The National Agricultural Lands Study,[1] in its Final Report issued in January, 1981, estimates that agricultural land is being converted to non-agricultural purposes at the rate of approximately 3 million acres per year.[2] This figure does not include the potential loss of additional or adjacent land which may also be taken out of agricultural production because it is uneconomical to farm the remaining portion. Once agricultural lands have been converted for other purposes, they are irretrievably and irrevocably lost as a source of food and fiber production. The loss of agricultural land also means a decrease in the number of

[1] The National Agricultural Lands Study was an interagency study of the availability of U.S. farmland which studied the extent and causes of farmland conversion and ways in which these lands might be retained for agricultural purposes. Formed in June, 1979, participating agencies included all the Cabinet level departments, Council on Environmental Quality, Environmental Protection Agency and the Water Resources Council.

[2] National Agricultural Lands Study, Final Report, p. 2.

producers and a decrease in the capacity to produce food and fiber. At the same time, however, the population of the United States is steadily increasing. Currently the United States is virtually self-sufficient in providing food for its populace, despite the fact that only 4% of the population is actively engaged in agriculture. In order to ensure our continued self-sufficiency in agriculture and to meet the expanding needs of a growing population, it is necessary to protect the agricultural resources that we have.

The National Agricultural Lands Study singles out the South as the area where loss of agricultural cropland is especially acute. The Final Reports states that more more than half of the U.S. agricultural land lost between the period 1967 and 1975 was in the South.[3] It estimates that 250,000 acres of agricultural land are converted each year in Louisiana alone.

Rapid population growth in the South will increase the demands for conversion of agricultural lands by industry, urban development and transportation.

II.

FEDERAL LAW AND POLICY DICTATE THAT PRIME AGRICULTURAL LAND BE PRESERVED WHEN POSSIBLE WILL BE SUBVERTED IF THE INTERSTATE COMMERCE COMMISSION IS PERMITTED TO UNLAWFULLY DEREGULATE THE CONSTRUCTION OF RAILROAD CLASSIFICATION YARDS

The Federal Government is also concerned about the disappearance of prime agricultural land and the possible effects on future generations of Americans.

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[3] National Agricultural Lands Study, Final Report, p. 19-20.

The Council on Environmental Quality published in the *Federal Register* (Vol. 45, No. 175, p. 59189) a memorandum entitled "Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy Act."

Issued August 11, 1980, the purpose of the memorandum was "to alert federal agencies to the need and opportunities to analyze agricultural land impacts more effectively in the project planning process and under the National Environmental Policy Act (NEPA)." In conjunction with CEQ Regulations (40 CFR 1501 *et seq.*), the memorandum firmly establishes the Federal policy that "[d]etermining the effects of a proposed Federal agency action on prime or unique agricultural lands must be an integral part of the environmental assessment process and must be a factor in deciding whether or not to prepare an environmental impact statement." Because prime and unique agricultural lands are a limited and valuable resource, the Council on Environmental Quality urged all agencies to make a particularly careful effort to apply the goals and policies of the National Environmental Policy Act to their actions and to obtain necessary assistance in their planning processes so that these lands will be maintained to meet our current national needs and the needs of future generations of Americans.

The "Farmland Protection Policy Act of 1981" (P.L. 97-98; 7 U.S.C. §4201-4209) enacted this policy into law. The stated purpose of the Act is to:

> minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses and to assure that Federal programs are administered in a manner that,

> to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland. [7 U.S.C. §4201(b)].

In carrying out this purpose, the Act states:

> the Department of Agriculture and other Federal agencies should take steps to assure that the actions of the Federal Government do not cause United States farm land to be irreversibly converted to nonagricultural uses in cases in which the importance of the protection of farmland nor otherwise outweigh the benefits of maintaining farmland resources. [7 U.S.C. §4201(a)(7)].

The Act charges the Department of Agriculture, "in cooperation with other departments, agencies, independent commissions, and other units of the Federal Government," with developing criteria for identifying the effects of federal programs on the conversion of agricultural lands to non-agricultural uses. Once such criteria are developed, all units of Federal Government are to use these criteria "to identify and take into account the adverse effects of Federal programs on the preservation of farmland" and "consider alternative actions, as appropriate, that could lessen such adverse effects." The Federal policy and mandate with regard to loss of agricultural lands is clear. Any federal action which could possibly jeopardize the existence of prime agricultural lands must fully consider the effects of the loss of such lands and seek alternatives that would minimize such effects.

AFBF and LFBF support the petitioner's position that the respondent Interstate Commerce Commission has been permitted by the Court of Appeals to deregulate the construction of railroad classification yards in a manner con-

trary to legal requirements and adverse to an orderly reduction in that agency's jurisdiction. Central to this issue is the permanent loss of a vast amount of prime farmlands without consideration of the present and future value and need of such lands for agricultural production.

The Federal programs to which the Farmland Protection Policy Act applies are defined to mean:

> those activities or responsibilities of a department, agency, independent commission, or other unit of the Federal government that involve (A) undertaking, financing, or assising construction or improvement projects; or (B) acquiring, managing, or disposing of Federal lands and facilities. [7 U.S.C. §4201(c)(4)].

The regulatory actions of the Interstate Commerce Commission, with respect to railroads and railroad line extentions or additions, are clearly "Federal programs" for which the Act requires that the Interstate Commerce Commission shall identify any negative effects, with regard to the protection of agricultural land, resulting from any proposed action and take into consideration alternative actions that could lessen the negative effects. If the Interstate Commerce Commission is allowed to deregulate the construction of railroad classification yards in a manner contrary to legal requirements, then the farmland protection policies of the Federal Government will be subverted and frustrated.

CONCLUSION

The irretrievable loss of prime agricultural land to non-agricultural uses is occurring at a rapid rate throughout the United States, especially in the South. Both the Council on Environmental Quality and Congress have enacted federal policy to preserve and protect prime agricultural lands. The Farmland Protection Policy Act requires Federal agencies and other units of the Federal Government to consider the effects of loss of prime farmland from any proposed Federal action, and to consider alternatives that would minimize such losses.

If the decision of the Court of Appeals is allowed to stand and railroads are permitted to take prime agricultural land through line extensions and additions without Interstate Commerce Commission hearings and determinations, then established Federal policy on this serious national problem would be wrongfully subverted.

WHEREFORE, Amici Curiae, American Farm Bureau Federation and Louisiana Farm Bureau Federation respectfully pray that this Court grant the writ of certiorari and reverse the decision below.

Respectfully submitted,

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